

<b>CURTIS I. HAINLINE</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>TOWN &amp; COUNTRY SUPERMARKET</b>	)	
Respondent	)	Docket No. 1,030,755
	)	
AND	)	
	)	
<b>BENCHMARK INS. CO.</b>	)	
Insurance Carrier	)	

Having reviewed the whole evidentiary record filed herein, together with the briefs of the parties, this Board Member finds and concludes that the Board does not have jurisdiction of the issue raised at this juncture of the proceedings and, therefore, this appeal from the ALJ's preliminary order should be dismissed.

Claimant suffered a work-related injury on June 28, 2006, and received treatment by Dr. Min. Dr. Min released claimant to light duty on August 14, 2006, with restrictions of no lifting above 30 pounds and no bending at the waist. Claimant testified that he returned to work and was given a job unloading frozen goods off a pallet. Claimant stated that the job exceeded his weight limit and that he was required to bend over. Claimant said he complained to Bill Floyd, respondent's owner, and Mr. Floyd told him to clock out and go home.

Mr. Floyd testified that claimant returned to work and began unloading a pallet. Mr. Floyd had not given claimant any instructions concerning what his job would be and denied he told claimant to unload frozen goods. Mr. Floyd said that claimant was unhappy because he was moved away from the dairy department and also because his shift was changed. Mr. Floyd said claimant told him he quit and left.

Claimant continued to treat with Dr. Min, and on September 27, 2006, Dr. Min again restricted him from working. Claimant requests temporary total disability compensation from the last date paid.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.<sup>1</sup> This includes review of the preliminary hearing issues listed in K.S.A. 44-534a(a)(2) as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.<sup>2</sup>

The issue of whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue of whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>3</sup>

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<sup>1</sup> K.S.A. 2005 Supp. 44-551.

<sup>2</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>3</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-04, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

An ALJ has the jurisdiction and authority to decide whether and for how long to grant temporary total disability benefits at a preliminary hearing. Furthermore, the Board cannot say that the ALJ's decision to award only four weeks of temporary total disability compensation was so arbitrary and capricious as to constitute a denial of due process of law. Accordingly, the Board does not have jurisdiction to address this issue at this juncture of the proceedings. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.<sup>4</sup> Accordingly, claimant's appeal is dismissed.

The respondent may preserve the issue for final award as provided by K.S.A. 44-534a(a)(2). That statute provides in pertinent part:

Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

**WHEREFORE**, it is the finding of this Board Member that the claimant's appeal is dismissed and Administrative Law Judge Thomas Klein's Order dated November 6, 2006, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 2007.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge

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<sup>4</sup> See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).